

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revise
Commission General Order Number 95 Pursuant
to D.05-01-030.

Rulemaking 05-02-023
(Filed February 24, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
REAFFIRMING DATES FOR TESTIMONY AND HEARING**

1. Summary

This Ruling reaffirms the dates for exchange of written testimony and the dates for hearing in this proceeding.

2. History

Pursuant to Rulemaking (R.) 05-02-023, this proceeding was initiated to consider whether to add Proposed Rule 94 to General Order (GO) 95. Proposed Rule 94 is identical to Proposed Rule Change (PRC) 26 considered in R.01-10-001. PRC 26 was not adopted in that proceeding. (See Decision 05-02-023.) Instead, the Commission ordered further proceedings to deal with objections to the new rule. PRC 26 and Proposed Rule 94 purport to establish uniform construction standards for attaching wireless antennas to jointly used poles and towers in this state.

Acting pursuant to R. 05-02-023, the parties conducted workshops July 11, 12 and 13, 2005 in San Francisco, July 26 and 27, 2005 in Los Angeles, and August 24 and 25, 2005 in San Francisco. On September 12, 2005, the parties jointly served a Workshop Report with three proposals for a rule that would be

an alternative to PRC 26. Comments on the Workshop Report may be (but are not required to be) filed and served on September 19, 2005. While the parties did not reach consensus on the new rule, the Workshop Report notes a narrowing of many of the issues that are before the Commission.

3. Schedule

Pursuant to the Scoping Memo and Ruling of Assigned Commissioner Brown on June 7, 2005, as amended at the request of the parties pursuant to an Administrative Law Judge (ALJ) ruling dated August 3, 2005, the schedule for service of testimony and hearing is as follows:

September 27, 2005	Parties, including the Consumer Protection and Safety Division (CPSD), will serve the written testimony and exhibits of witnesses they expect to call at the evidentiary hearing. Testimony will be in question-and-answer format where practical, with a copy to the Assigned Commissioner and the ALJ.
October 18, 2005	Parties, including CPSD, will serve their written reply testimony and exhibits, with a copy to the Assigned Commissioner and the ALJ.
November 14-18, 2005	Evidentiary hearing will be conducted beginning at 10:00 a.m., November 14, 2005, in the Commission Hearing Room, State Office Building, 505 Van Ness Avenue, San Francisco, California

Briefs and reply briefs are to be filed after receipt of transcripts on dates to be determined at hearing.

4. Scope of the Proceeding

As set forth in the June 7 Scoping Memo, the issues to be considered in this proceeding are set forth below. To the extent parties have agreed in workshops

to narrow or otherwise deal with these issues, an explanation of that agreement should be reflected in parties' testimony and briefs.

- (1) Does § 332(c)(7)(B)(iv) of the 1996 Telecommunications Act preempt the Commission from adopting requirements on the clearances between facilities that should be maintained when wireless carriers attach wireless antenna with radio frequency (RF) emissions to jointly used poles and towers?
- (2) Does the record provide evidence supporting the concept of a "cylinder of proximity" in which electric supply and communication workers, and others, can move without coming into proximity of RF emissions that the Federal Communications Commission (FCC) has deemed hazardous, or does the "cylinder" concept result in more stringent RF emission standards that are contrary to law?
- (3) Has a 4-foot default distance been justified as part of the "cylinder of proximity"?
- (4) Does § 332(c)(7)(B)(iv) preempt the Commission from requiring a disconnect switch on RF-emitting wireless antennas attached to jointly used poles and towers? What evidence supports the need for such a disconnect switch, and are disconnect switches required for any other type of facility attached to jointly used poles and towers?
- (5) Does Proposed Rule 94 deal adequately with pole-top installations and ancillary installations with respect to RF-emitting wireless antennas?
- (6) What evidence supports applying the wireless antenna rule on wireless communications companies while exempting the RF-emitting unlicensed antennas of power companies and others.

5. Service List; Electronic Service

The Service List for this proceeding is posted on the Commission's website (www.cpuc.ca.gov) and includes electronic mail addresses for virtually all participants. Pursuant to Rule 2.3.1 of the Rules of Practice and Procedure,

service of the Workshop Report, prepared testimony, motions, briefs and other documents shall be made by electronic mail to participants who have supplied an electronic mail address. A paper copy of all such documents also shall be served on the ALJ and on those who request a paper copy.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. This proceeding is quasi-legislative, and an evidentiary hearing is necessary.
4. Service of documents shall be made by electronic mail pursuant to Rule 2.3.1 of the Rules of Practice and Procedure, with a paper copy also served on the ALJ.

Dated September 14, 2005, at San Francisco, California.

/s/ Glen Walker
Glen Walker
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Reaffirming Dates for Testimony and Hearing on all parties of record in this proceeding or their attorneys of record.

Dated September 14, 2005, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.